

REMARKS

This Application has been carefully reviewed in light of the Office Action mailed September 7, 2006 ("Office Action"). At the time of the Office Action, Claims 1-11, 13-16, 18-36, and 38-52 were pending in the application. In the Office Action, the Examiner rejects Claims 1-11, 13-16, 18-36, and 38-52. To advance prosecution of this case, Applicants amend Claims 1, 21, and 49. Applicants do not admit that any amendments are necessary due to any prior art or any of the Examiner's rejections. Applicants respectfully request reconsideration and allowance of all pending claims.

Interview

Applicants thank the Examiner for the telephonic interview that occurred on December 5, 2006. During the interview, the Examiner and the undersigned attorney for Applicants discussed "calculating a delay period based at least in part on the delay constant and a network address associated with the at least one node" as recited, in part, in amended Claim 1.

Claim Objection

In the Office Action, the Examiner objects to Claim 1 based on a purported informality. Without admitting that the objection is proper, Applicants respectfully submit that Claim 1, as amended, does not include the purported informality. Accordingly, Applicants respectfully request reconsideration and allowance of amended Claim 1.

Section 103 Rejections

Claims 1-11, 13-15, 21-36, 38-40, 46, 47 and 49-52

The Examiner rejects Claims 1-11, 13-15, 21-36, 38-40, 46, 47, and 49-52 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,192,404 B1 issued to Hurst, et al. ("*Hurst*") in view of U.S. Patent No. 6,804,240 B1 issued to Shirakawa, et al. ("*Shirakawa*"). Applicants respectfully request reconsideration and allowance of Claims 1-11, 13-15, 21-36, 38-40, 46, 47, and 49-52.

The cited references fail to support the rejection of amended Claim 1 for at least two reasons. First, the cited references fail to teach, suggest, or disclose "calculating a delay period based at least in part on the delay constant and a network address associated with the

at least one node” as recited in amended Claim 1. Second, the Examiner has failed to properly identify a motivation for combining the teachings of *Hurst* and *Shirakawa*.

First, the *Hurst-Shirakawa* combination fails to teach, suggest, or disclose “calculating a delay period based at least in part on the delay constant and a network address associated with the at least one node” as recited in amended Claim 1. *Hurst* generally describes a method for determining the time-to-live (TTL) distances between a base node and other nodes in a network. (*Abstract*). According to *Hurst*, the base node generates multiple query messages, and each query message comprises a different “TTL parameter value.” (Col. 6, ll. 25-36). *Hurst* explains that a TTL parameter value may represent a number of network hops. (Col. 1, ll. 47-56). After generating the query messages, the base node multicasts the query messages over the network. Each time a particular query message is passed from one node to another, the TTL parameter value (e.g., network hop value) of that query message is decremented by one. (Col. 1, ll. 46-67; col. 2, ll. 1-18). *Hurst* explains that a particular query message is destroyed when its TTL parameter value falls to zero. (Col. 2, ll. 13-15). Thus, *Hurst* concludes that a network node that is far from the base node will likely not receive query messages having low TTL parameter values. (Col. 2, ll. 1-18; col. 6, ll. 58-60). In particular, *Hurst* states: “Specifically, some of the TTL query messages sent by computer 102A have TTL parameter values which are so low that these TTL query messages expire prior to reaching computer 102R.” (Col. 6, ll. 57-60). *Hurst* explains that the “lowest TTL parameter value of any TTL query message to reach” a particular node “is determined by TTL determining logic...to be the TTL distance between” the base node and the particular node. (Col. 7, ll. 5-8). Thus, *Hurst* describes a method for determining TTL distances between a base node and other nodes in a network.

Notably, there is nothing in *Hurst* that teaches, suggests, or discloses “calculating a delay period based at least in part on the delay constant and a network address associated with the at least one node” as recited in amended Claim 1. Indeed, *Hurst* makes no mention of a “delay constant” or a “network address associated with at least one node.” In addition, *Hurst* fails to teach, suggest, or disclose “calculating a delay period based at least in part on the delay constant and a network address associated with the at least one node” as recited in amended Claim 1.

Like *Hurst*, *Shirakawa* fails to teach, suggest, or disclose the foregoing aspect of amended Claim 1. *Shirakawa* generally describes a method for extracting bit sequences from

a data packet and using the extracted bit sequences to determine a particular processing routine to apply to the data packet. (*Abstract*). In particular, once a data packet is received, the system in *Shirakawa* extracts a particular bit sequence from the packet header. (Col. 4, ll. 1-7). The extracted bit sequence is used to generate digest information. (Col. 4, ll. 1-7). Using the digest information, the system in *Shirakawa* determines the appropriate processing routine to apply to the data packet. (Col. 4, ll. 57-65). The system then generates transfer control information that specifies a particular output terminal. (Col. 4, ll. 66-67; col. 5, ll. 1-8). *Shirakawa* explains that the system may search a database to determine the particular output terminal or the appropriate transfer control information. (Col. 8, ll. 38-47). *Shirakawa* explains that the search of the database may cause a delay depending on whether the database is searched according to network address or another type of search key. (Col. 8, ll. 38-47). In particular, *Shirakawa* states that the “delay of the search is different depending on a type of the key and a distribution of that key on the database.” (Col. 8, ll. 43-45). In conjunction with determining the transfer control information, the system outputs the data packet based on the particular output terminal specified by the transfer control information. (Col. 5, ll. 8-12). Thus, *Shirakawa* describes a method for extracting bit sequences from a data packet and using the extracted bit sequences to determine a particular processing routine to apply to the data packet.

There is nothing in *Shirakawa* that teaches, suggests, or discloses “calculating a delay period based at least in part on the delay constant and a network address associated with the at least one node” as recited in amended Claim 1. As explained above, *Shirakawa* briefly mentions a “delay” that is merely incident to a database search. *Shirakawa* simply observes that different types of searches may result in different search delays. Merely noting that database searches take time or cause delays does not teach, suggest, or disclose “*calculating a delay period* based at least in part on the *delay constant and a network address* associated with the at least one node” as recited in amended Claim 1. (Emphases added). Indeed, *Shirakawa* fails to teach, suggest, or disclose “a delay constant,” a “network address associated with the at least one node,” or “calculating a delay period” as recited in amended Claim 1. Thus, *Shirakawa* fails to teach, suggest, or disclose “calculating a delay period based at least in part on the delay constant and a network address associated with the at least one node” as recited in amended Claim 1. Because both *Hurst* and *Shirakawa* fail to teach,

suggest, or disclose the foregoing aspects of amended Claim 1, the proposed combination fails to support the rejection.

Second, the Examiner fails to properly identify a motivation for combining the teachings of *Hurst* and *Shirakawa*. In their prior Responses, Applicants have repeatedly shown that neither *Hurst* nor *Shirakawa* provides a motivation for the proposed combination. The Examiner implicitly admits to this point in the Office Action but claims that the motivation to combine “is generally available to one of ordinary skill in the art.” (Office Action, p. 15). The Office Action states:

[T]he examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art....In this case, the knowledge is generally available to one of ordinary skill in the art.

(Office Action, p. 15). Notably, the Examiner provides no evidence to support the statement that “the knowledge is generally available to one of ordinary skill in the art.” Accordingly, Applicants traverse this assertion. This type of conclusory and unsupported assertion is improper. Such a statement is “not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references.” MPEP § 2143.01; *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993). The Examiner must identify a suggestion (i.e., “objective reason”) to combine the references *and* must provide evidence showing that the particular suggestion was “in the knowledge generally available to one of ordinary skill in the art.” Because the Examiner is merely relying on personal knowledge in asserting that a motivation is “generally available to one of ordinary skill in the art” (Office Action, p. 15), Applicants traverse the rejection and submit that “the examiner must provide documentary evidence in the next Office Action if the rejection is to be maintained.” MPEP § 2144.03(C). If the Examiner persists in relying on personal knowledge, then “the examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding.” MPEP § 2144.03(C). Otherwise the rejection must be withdrawn. For at least the foregoing reasons, Applicants respectfully requests reconsideration and allowance of amended Claim 1.

In rejecting Claims 6, 21, 26, 31, 46, 47, and 49-52, the Examiner employs the same rationale used with respect to Claim 1. Accordingly, for reasons analogous to those stated

above with respect to amended Claim 1, Applicants respectfully requests reconsideration and allowance of Claims 6, 21, 26, 31, 46, 47, and 49-52.

Claims 2-5, 7-11, 13-15, 22-25, 27-30, 32-36, and 38-40 depend from independent claims shown above to be allowable. In addition, these claims recite further elements not taught, suggested, or disclosed by the cited references. For example, the cited references fail to teach, suggest, or disclose that “each of the plurality of nodes on the network forwards to the caller node an answer to the query at different times” as recited in Claim 3. In rejecting Claim 3, the Examiner cites a portion of *Hurst* that describes a base node receiving messages from other nodes in a network. In particular, *Hurst* states that “no time limit is imposed upon computers 102B-Y for responding to TTL query messages.” (Col. 8, ll. 1-2). However, the mere absence of a time limit does not affirmatively teach, suggest, or disclose that “each of the plurality of nodes...forwards...an answer to the query *at different times*” as recited in Claim 3. (Emphases added). Applicants remind the Examiner that “[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art.” M.P.E.P. § 2143.03 (citing *In re Wilson*, 424 F.2d 1382, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970)). Because the cited references fail to teach, suggest, or disclose that “each of the plurality of nodes on the network forwards to the caller node an answer to the query at different times,” as recited in Claim 3, the cited references fail to support the rejection.

In addition, the cited references fail to teach, suggest, or disclose that “each of the plurality of nodes on the network calculates a respective delay period by multiplying the delay constant by its own network address” as recited in Claim 4. As explained above, *Hurst* and *Shirakawa* fail to teach, suggest, or disclose “calculating a delay period based at least in part on the delay constant and a network address associated with the at least one node” as recited in amended Claim 1. Furthermore, there is nothing in the cited references that teaches, suggests, or discloses calculating “a respective delay period by *multiplying* the delay constant by its own network address” as recited in Claim 4. (Emphasis added). Because the cited references fail to teach, suggest, or disclose this aspect of Claim 4, the cited references fail to support the rejection. For at least the foregoing reasons, Applicants respectfully request reconsideration and allowance of Claims 2-5, 7-11, 13-15, 22-25, 27-30, 32-36, and 38-40.

Claims 16, 18-20, 41-45 and 48

The Examiner rejects Claims 16, 18-20, 41-45 and 48 under 35 U.S.C. 103(a) as being unpatentable over *Hurst* in view of U.S. Patent No. 5,471,461 issued to Engdahl, et al. ("*Engdahl*"), in view of *Shirakawa* and further in view of U.S. Patent No. 6,791,981 B1 issued to Novaes ("*Novaes*"). Applicants respectfully request reconsideration and allowance of Claims 16, 18-20, 41-45 and 48.

The cited references fail to support the rejection of Claim 16 because the cited references fail to teach, suggest, or disclose "calculating a delay period to wait before responding to the query, the delay period based at least in part on the delay constant and a network address associated with the node" as recited in Claim 16. As shown above with respect to amended Claim 1, both *Hurst* and *Shirakawa* fail to teach, suggest, or disclose "calculating a delay period...based at least in part on the delay constant and a network address associated with the...node." *Engdahl* and *Novaes* also fail to teach, suggest, or disclose this aspect of Claim 16. The cited portion of *Engdahl* discloses a network wherein the node with the lowest address serves as a moderator node. (*Engdahl*; col. 14, ll. 20-42). There is nothing, however, in *Engdahl* that teaches, suggests, or discloses a "delay constant" or "calculating a delay period to wait before responding to the query, the delay period based at least in part on the delay constant and a network address associated with the node" as recited in Claim 16.

Like *Engdahl*, *Novaes* fails to teach, suggest, or disclose the foregoing aspect of Claim 16. *Novaes* discloses a method for confining multicast communications to a subnetwork. (*Abstract*). According to *Novaes*, the node in the subnetwork with the highest IP address may be selected as the "subnetwork leader." (Col. 14, ll. 15-23). The subnetwork leader is operable to compile a list of nodes from which the subnetwork leader received a heartbeat message. (Col. 6, ll. 54-58). *Novaes*, however, fails to teach, suggest, or disclose "a delay period" or "calculating a delay period to wait before responding to the query, the delay period based at least in part on the delay constant and a network address associated with the node" as recited in Claim 16. Because the cited references fail to teach, suggest, or disclose this aspect of Claim 16, the cited references fail to support the rejection.

In rejecting Claims 41 and 48, the Examiner employs rationale analogous to that used with respect to Claim 16. Accordingly, for at least the reasons stated above with respect to

Claim 16, Applicants respectfully request reconsideration and allowance of Claims 41 and 48.

Claims 18-20 and 42-45 depend from independent claims shown above to be allowable. In addition, these claims recite further elements not taught, suggested, or disclosed by the cited references. For at least these reasons, Applicants respectfully request reconsideration and allowance of Claims 18-20 and 42-45.

CONCLUSION

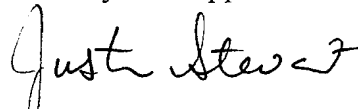
Applicants have made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicants respectfully request full allowance of all pending claims.

If the Examiner feels that a telephone conference would advance prosecution of this Application in any manner, the Examiner is invited to contact Justin N. Stewart, Attorney for Applicants, at the Examiner's convenience at (214) 953-6755.

The Commissioner is hereby authorized to charge any fees or credit any overpayment to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.
Attorneys for Applicants



Justin N. Stewart
Reg. No. 56,449

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CORRESPONDENCE ADDRESS:

at Customer No.

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